IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12014 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVESH HARIBHAI ODD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12014 of 2004

MS BANNA DATTA FOR MR AR SHAIKH for Petitioner No. 1

MS HB POONANI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

By filing this petition under Article 226 of the

Constitution of India read with Articles 21 and 22 (b) of the Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 15.4.2004 passed by the Police Commissioner, City of Rajkot and Detaining Authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "The PASA Act" for short), whereby, the Detaining Authority has branded the present petitioner as "Boot Legger" within the meaning of Section 2 (b) of the PASA Act. At present the present petitioner has been detained at Central Prison, Vadodara.

2. It is alleged that the order passed by the Detaining Authority is arbitrary, illegal and suffers from non application of mind. The grounds of assailing the order of detention are mentioned in para 5 (1) to 5 (24). Ms. Banna Datta, learned Counsel appearing for Mr. Shaikh for the petitioner has concentrated her arguments while assailing the order of detention on two main grounds. First point pressed into service by her is that it is a case of unreasonable delay in passing the order of detention and the same is remained unexplained. Indisputably there is no reply affidavit in this matter filed by the Detaining Authority or the Competent Officer. The second point is that the order is mechanically passed. Out of 5 offences allegedly committed by the present petitioner, the last offence i.e. 5th offence referred to in the grounds of detention is registered at "A" Division Police Station, Rajkot City on 10.2.2004. On that day, the petitioner was arrested and was enlarged on bail on 11.2.2004. Thereafter, statements of two witnesses were recorded by the Police Inspector, Rajkot City on 12.4.2004 and both the witnesses have described the petitioner as Boot Legger and head strong person. Both these statements came to be verified by the Detaining Authority itself on 13.4.2004 i.e. on the next day. The order under challenge is dated 15.4.2004.

3. Undisputable on 14.4.2004 there was a public holiday as the nation was celebrating the birth anniversary of Dr. Ambedkar. In absence of any cogent evidence to the effect that with all relevant papers the things were placed before the authority immediately on 13.4.2004 and the authority has applied its mind even on the non working day i.e. on 14.4.2004, and has passed the impugned order of detention on 15.4.2004, it can be inferred and said that the same has been passed mechanically. As per the settled legal position, on both these points, the order of detention is not found sustainable. Both these infirmities found go to the

route of the legality and validity of the order under challenge, therefore, same is required to be quashed and set aside. Hence, the order of detention dated 15.4.2004 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside.

4. For the foregoing reasons, this petition is allowed. The order of detention dated 15.4.2004 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required to be detained in connection with any other case. Rule is made absolute. Direct Service permitted.

(C.K. Buch, J.)

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